

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

DONALD C. HUTCHINS,

Plaintiff,

Civil Action No. 04-30126-MAP

v.

CARDIAC SCIENCE, INC.,

Defendant.

**DEFENDANT CARDIAC SCIENCE, INC.'S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

Plaintiff filed the present motion on March 2, 2007. However, pursuant to the scheduling order, the written discovery deadline was October 12, 2004. (Dkt. No. 21). Plaintiff did not serve any discovery requests within the discovery period. Nor did he seek to take any depositions of Cardiac Science or anyone else. Cardiac Science is not obligated to produce documents in response to requests that were served over six months after the discovery deadline expired. To the extent Plaintiff seeks an extension of the discovery deadline that expired over two-and-a-half years ago, a scheduling order shall not be modified except upon a showing of "good cause." Fed. R. Civ. P. 16(b) and D. Mass. LR 16.1(g). Plaintiff has failed to identify, or even attempt to identify, any good cause for his late request. Further, Plaintiff did not meet and confer with Cardiac Science regarding the documents sought as required by Fed. R. Civ. P. 37(a)(2)(B) and D. Mass. LR 37.1(a). His motion should be denied.

Plaintiff is already in possession of the primary documents he seeks. A true and correct copy of the Asset Purchase Agreement between Aristotle and Cardiac Science was attached to

Cardiac Science's Memorandum to Clarify Issues. (Dkt. No. 235, Ex. A). Plaintiff himself attached a copy of Cardiac Science's Request for Indemnification and an affidavit from Steven Lindseth attesting to the resolution of the Request for Indemnification to his Motion for Temporary Restraining Order. (Dkt. No. 96, Ex. 1 and Ex. 3, ¶12). Because Plaintiff's discovery requests are untimely, his motion violates the Federal and Local Rules, and because he is already in possession of the majority of the documents he seeks, Plaintiff's motion to compel discovery should be denied.

Respectfully submitted,

CARDIAC SCIENCE, INC.

Dated: March 8, 2007

By: s/ Eric H. Chadwick
Eric H. Chadwick (*Pro Hac Vice*)
Scott G. Ulbrich (*Pro Hac Vice*)
PATTERSON, THUENTE, SKAAR
& CHRISTENSEN, P.A.
4800 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2100
Tel: (612) 349-5740
Fax: (612) 349-9266
chadwick@ptslaw.com
ulbrich@ptslaw.com

Paul H. Rothschild
BACON & WILSON P.C.
33 State Street
Springfield, MA 01103
Phone: (413) 781-0560
Fax: (413) 739-7740

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DONALD C. HUTCHINS,

Plaintiff,

Civil Action No. 3:04-cv-30126 MAP

v.

CERTIFICATE OF SERVICE

CARDIAC SCIENCE, INC., ET AL.,

Defendants.

I hereby certify that on **March 8, 2007**, I caused the following documents:

1. Defendant Cardiac Science's Memorandum of Law in Opposition to Plaintiff's Motion to Compel Discovery; and
2. Certificate of Service.

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

Mr. Paul H. Rothschild
Bacon & Wilson, P.C.
33 State Street
Springfield, MA 01103
prothschild@bacon-wilson.com

John J. Egan
Egan, Flanagan and Cohen, P.C.
67 Market Street
P.O. Box 9035
Springfield, MA 01102-9035
jjegan@eganflanagan.com

Ms. Colleen M. O'Neil
Calfee, Halter & Griswold, LLP
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, OH 44114-2688
coneil@calfee.com

I further certify that on March 8, 2007 the following was served upon the below-named parties via United States Mail, postage prepaid:

Mr. Donald Hutchins
1047 Longmeadow Street
Longmeadow, MA 01106-2201

Respectfully submitted,

**PATTERSON, THUENTE,
SKAAR & CHRISTENSEN, P.A.**

Dated: March 8, 2007

By: s/ Eric H. Chadwick
Eric H. Chadwick (*Pro Hac Vice*)
Scott G. Ulbrich (*Pro Hac Vice*)
4800 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2100
Tel: (612) 349-5740
Fax: (612) 349-9266
chadwick@ptslaw.com
ulbrich@ptslaw.com

and

Paul H. Rothschild
BACON & WILSON P.C.
33 State Street
Springfield, Massachusetts 01103
Tel: (413) 781-0560
Fax: (413) 739-7740

ATTORNEYS FOR CARDIAC SCIENCE, INC.